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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 29th January, 2025***

+ **CRL.L.P. 29/2021**

STATE

.....Petitioner

Through: Ms. Meenakshi Dahiya, Additional
Public Prosecutor for Respondent-
State

Versus

SONU

S/O Lal Singh

R/o H.No.F-212, Shahbad Dairy,

Delhi

.....Respondent

Through: Mr. Harshit Jain, Advocate on the
panel of DHCLSA

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The *present Leave Petition under Section 378(3) of the Code of Criminal Procedure, 1973* (hereinafter referred to as "Cr.P.C.") has been filed by Appellant-State seeking leave to Appeal against the Judgment dated 04.03.2020, *vide* which the ***Respondent/Accused-Sonu has been acquitted of the offences under Sections 457/354 of Indian Penal Code, 1860*** (hereinafter referred to as "IPC") and Section 8 of the *Prevention of Children from Sexual Offences Act, 2012* (hereinafter referred to as "POCSO") in FIR No. 669/2013, registered at Police Station Shahbad Dairy, Delhi.

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2. *The main ground of challenge is that the impugned Judgment is premised on conjectures and surmises.* There is cogent evidence on record by way of deposition of the Prosecutrix (PW-1) and her parents (PW-2 & PW-3) to prove the Charge beyond reasonable doubt. However, their evidence has not been appreciated in correct perspective and has been ignored. Furthermore, PW-4, Shri Mukesh Kumar, an official from Sub-Registrar's office, has proved the age of the Victim as 11 years 09 months and 4 days on the date of the offence.

3. The main ground on which the accused has been acquitted is that no evidence was collected by the Prosecution about the bolt of the jhuggi having been broken. However, it has not been appreciated that there is consistency in the testimony of the Prosecutrix, which is corroborated by her statement under Section 161 of Cr.P.C. and her testimony recorded before the Court, to prove the offence under Section 354 of IPC, which has been proved beyond reasonable doubt.

4. Learned Additional Public Prosecutor for Appellant-State has submitted that no due weightage has been given to the deposition of PW-2 and PW-3, parents of the accused.

5. Also, the mandatory presumption under *Sections 29 and 30 of the POCSO Act*, which provides that Court shall presume that accused had committed the act against the victim in certain criminal mental state, has neither been considered nor appreciated while considering the testimony of the prosecution witnesses.

6. It is submitted that as per Section 30 of POCSO Act, the Court has to draw a presumption in favour of the prosecution, where culpable



mental state is required on the part of the accused. The prosecution had proved its case beyond reasonable doubt but the accused has been erroneously acquitted *vide* impugned Judgment. It is, therefore, stated that there are sufficient grounds for the Leave to be granted to challenge the impugned Judgment and for the conviction of the Respondent/accused.

7. *Learned Counsel on behalf of the Respondent-accused*, has argued that presumption under Section 29 of the POCSO Act can be invoked only after fundamental facts have been established.

8. In the present case, no fundamental facts have been brought on record, as has rightly been observed in the impugned Judgment. Furthermore, the testimony of the prosecution witnesses failed to prove the charges levelled against the Respondent. Therefore, it is submitted that there is no infirmity in the impugned Judgement and the present Leave to Appeal deserves to be dismissed.

9. **Submissions heard and record perused.**

10. The grounds raised by the Appellant-State to challenge the acquittal of the Respondent-accused is that evidence of the Prosecutrix (PW-1) has not been correctly appreciated by the Trial Court. The testimony of PW-1 duly supports the case of the Prosecution in identifying the Respondent/accused as the person who caught hold of her hand after entering into her jhuggi, and thereby committed the alleged offences. The Appellant-State has further contended that the benefit of any fault in the investigation cannot be given where the prosecution has produced cogent evidence and proved its case beyond reasonable doubt.

11. The Appellant-State has vehemently argued that the Respondent



ought to have been convicted for charges under Sections 457, 354 and POCSO Act.

12. *Section 457 of IPC* prescribes punishment for an aggravated form of criminal trespass. It states that where a person who commits lurking house-trespass by night or house-breaking by night, commits an offence punishable with imprisonment for a term which may extend to five years, and shall also be liable to fine.

13. *PW-1 i.e. the Prosecutrix/Victim*, in her cross-examination has deposed that prior to the alleged incident, the accused had never misbehaved with her nor had made any kind of gestures towards her. PW-1 further stated that on the night of alleged incident, the bolt of the door was locked from inside but the latch was broken. She also stated that no noise was observed by any of her family members when the latch was broken.

14. In this backdrop, the testimony of the two material witnesses, the parents of the victim become significant who were the eye witnesses to the alleged incident.

15. *PW-2, father of the Prosecutrix* deposed that the door of the house was bolted from inside and it was broken open by accused. He stated that he had woken up after hearing his daughter screaming and saw the accused 'standing' beside his daughter in a drunken state.

16. *PW-3, mother of the Prosecutrix* deposed along the same lines as PW-2 and stated that the latch of the main door was loose. She also stated that she saw the accused holding the hand of her daughter.

17. The learned Trial Court in the impugned Judgment has noted that



the Prosecutrix and her family resided in a one-room Jhuggi in a thickly populated area but surprisingly no noise was observed by the neighbours on any other person. No public person was examined or even cited as a witness to corroborate the fact that the bolt of the door. Pertinently, given the size of the house, had the latch been broken by the accused, it would have created some noise and it is impossible to accept that no family member heard the latch being broken.

18. PW-5, *Constable Nahar Singh* has also deposed that no door latch was recovered from the spot in his presence. There is no photograph or any record to show that any door or latch was broken. There appears to be no forceful entry in the house and possibility of consent entry in the house cannot be ruled out.

19. Thus, considering the inconsistency in the testimony of the witnesses regarding the bolt and latch on the door, and no evidence of said bolt being broken by the accused, *the ingredients of Section 457 of IPC to constitute an offence of house breaking by night, are not satisfied.*

20. *Section 354 of IPC* provides that whosoever uses criminal force to any woman intending to outrage or knowing it to be likely that he will thereby outrage her modesty, commits a crime.

21. In the present case, the prosecution has not been able to bring forth anything on record to show that the accused had any intention to commit forcible sexual assault on the Prosecutrix and has thus, failed prove the offence under Section 354 of IPC. The testimony of PW-2 and PW-3 clearly establish that they saw the accused standing beside their daughter and holding her hand, which clearly *does not establish any act of criminal*



force to outrage her modesty or an intention to sexually assault her.

22. Section 29 of the POCSO Act provides that Court shall presume that the accused has committed the offence for which he is charged with, unless contrary is proved. Section 30 of the POCSO Act provides that when someone is prosecuted for an offense that requires a culpable mental state, the court will presume the existence of that mental state.

23. In the present case, it cannot be said that the accused had entered the house of the Prosecutrix with an intent to sexually harass her. The learned ASJ has rightly held that it seemed highly improbable that accused would surreptitiously enter inside the jhuggi for doing any sexual act with the victim while her parents were sleeping alongside her. There is no allegation that the accused even uttered any word to the victim. There is not a shred of evidence to indicate that the accused wrongly touched the victim and molested her. *Thus, the presumption of guilt cannot be drawn against the accused.*

24. The learned ASJ has comprehensively considered the entire evidence on record to ascertain if the offence of sexual assault was made on the minor victim, but in view of the contradictions in the testimony of the material witnesses and the evidence on record, it was rightly concluded that the prosecution had failed to prove its case beyond reasonable doubt. Thus, the charges under Section 457/354 IPC and under POCSO Act, have rightly been held to have *not been proved by the prosecution.*

25. Accordingly, it is held that there is no merit in the present Criminal Leave Petition against the impugned Judgment of acquittal dated



04.03.2020, which is hereby, dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 29, 2025

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